

Regulation of the Somerville Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas conclusive evidence states that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritation to the eyes, nose, and throat¹;

Whereas, in 2009, among the 15.7% of students nationwide who smoked cigarettes during the 30 days prior to the survey and were less than 18 years old, 14.1% usually obtained them by buying them in a store (e.g. convenience store, supermarket, or discount store) or gas station²;

Whereas, in 2017, among the 8.7% of students nationwide who currently³ use electronic vapor products, 13.6% had usually gotten their own electronic vapor products by buying them in a store (e.g., convenience store, supermarket, discount store, gas station, or vape store)⁴;

Whereas the U.S. Department of Health and Human Services has concluded that cigarettes are addicting, similar to heroin and cocaine⁵, and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development⁶, may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence⁷;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁸;

Whereas 88% of all adult smokers begin smoking before the age of 18, and 99% started by age

¹ Centers for Disease Control and Prevention (CDC). “Smoking and Tobacco Use; Fact Sheet; Health Effects of Cigarette Smoking.” Smoking and Tobacco Use, May 9, 2018.

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/

² “Youth Risk Behavior Surveillance – United States, 2009.” Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR) Surveillance Summaries, 59(No. SS-5) (June 4, 2010): 142. <https://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

³ Current use is defined as having used a tobacco product at least one time in the 30 days prior to the survey.

⁴ Kann, Laura, Tim McManus, William A Harris, et al. “Youth Risk Behavior Surveillance — United States, 2017.” Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), Surveillance Summaries 67(No. 8) (June 15, 2018): 479. <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>

⁵ U.S. Department of Health and Human Services. “The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General.” Atlanta, GA. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>. Chapter 2. p. 30.

⁶ U.S. Department of Health and Human Services. “The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General.” Chapter 13, p. 122.

⁷ U.S. Department of Health and Human Services. “The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General.” Chapter 14, pp. 773-828.

⁸ United States v. Phillip Morris USA Inc., et al., No. 449 F. Supp. 2d 1 (D.D.C. 2006). at Paragraph 3301

26⁹;

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will reduce tobacco initiation, particularly among adolescents 15-17, and will improve health across the lifespan and save lives¹⁰;

Whereas flavored cigar dollar sales increased by 53% and unit sales increased by 39% between 2008 and 2011¹¹, and many non-cigarette tobacco products, such as cigars and cigarillos, which can be sold in a single “dose,” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth¹²;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited fruit, herb, or spice flavorings of cigarettes¹³, largely because these flavored products were marketed to youth and young adults^{14,15,16}, and younger smokers were more likely to have tried these products than older smokers¹⁷, and neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas flavoring agents increase the appeal of tobacco products to youth and tobacco use initiation and progression to tobacco dependence are more common with the use of the flavored products¹⁸;

Whereas the U.S. Surgeon General recognized that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to put greater restrictions

⁹ “Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.” Rockville, MD: U.S. Department of Health and Human Services, 2012.
<https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>. Chapter 1, p. 8.

¹⁰ Institute of Medicine. “Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products.” *National Academies Press*, 2015. <https://doi.org/10.17226/18997>.

¹¹ Delnevo, Cristine D., Daniel P. Giovenco, Bridget K. Ambrose, Catherine G. Corey, and Kevin P. Conway. “Preference for Flavoured Cigar Brands among Youth, Young Adults and Adults in the USA.” *Tobacco Control* 24 (2015): 389–94. <https://doi.org/10.1136/tobaccocontrol-2013-051408>.

¹² Farber, Harold J., Judith Groner, Susan Walley, and Kevin Nelson. “Protecting Children From Tobacco, Nicotine, and Tobacco Smoke.” *Pediatrics*, the Official Journal of the American Academy of Pediatrics 136, no. 5 (November 2015): 998–1007. <https://doi.org/10.1542/peds.2015-3110>.

¹³ 21 U.S.C. § 387g

¹⁴ Carpenter, Carrie M., Geoffrey Ferris Wayne, John L. Pauly, Howard K. Koh, and Gregory N. Connolly. “New Cigarette Brands with Flavors That Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs* 24, no. 6 (December 2005): 1601–10. <https://doi.org/10.1377/hlthaff.24.6.1601>.

¹⁵ Lewis, M. Jane, and Olivia Wackowski. “Dealing With an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health* 96, no. 2 (February 2006): 244–51. <https://doi.org/10.2105/AJPH.2004.061200>.

¹⁶ “Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.” 2012. p. 537

¹⁷ Klein, Sarah M., Gary A. Giovino, Dianne C. Barker, Cindy Tworek, K. Michael Cummings, and Richard J. O’Connor. “Use of Flavored Cigarettes Among Older Adolescent and Adult Smokers: United States, 2004–2005.” *Nicotine & Tobacco Research* 10, no. 7 (July 1, 2008): 1209–14. <https://doi.org/10.1080/14622200802163159>.

¹⁸ Farber, et al. “Protecting Children From Tobacco, Nicotine, and Tobacco Smoke.”

on sales, including bans on entire categories of tobacco products¹⁹;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014²⁰;

Whereas, in 2017, electronic cigarettes (e-cigarettes) were the most commonly used tobacco product among high school (11.7%; 1.73 million) and middle school (3.3%; 0.39 million) students²¹;

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum²²;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”²³;

Whereas in a lab analysis, electronic cigarette cartridges that were labeled as containing no nicotine still delivered some nicotine²⁴;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle school students increased from 0.6% in 2011 to 4.9% in 2018 and electronic cigarette use among high school students increased from 1.5% in 2011 to 20.8% in 2018²⁵;

Whereas electronic cigarettes have been shown to cause nicotine addiction in adolescents²⁶ and

¹⁹ U.S. Department of Health and Human Services. “The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General.” Chapter 16, p. 872

²⁰ Arrazola, René A., Tushar Singh, Catherine G. Corey, et al. “Tobacco Use Among Middle and High School Students — United States, 2011–2014.” Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)* 64, no. 14 (April 17, 2015): 381–85. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5779546/>.

²¹ Wang, Teresa W., Andrea Gentzke, and Saida Sharapova. “Tobacco Product Use Among Middle and High School Students — United States, 2011–2017.” Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)* 67 (2018): 629–633. <https://doi.org/10.15585/mmwr.mm6722a3>.

²² Fudala, Monica J. “E-Cigarettes: Are They Safe? An Update For Primary Care Physicians.” *Illinois Academy of Family Physicians*, June 2017. <https://www.iafp.com/assets/Education/iafp%20e-cig%20article%208.2017.pdf>.

²³ Massachusetts Department of Environmental Protection, 310 CMR 30.136

²⁴ Hadwiger, Michael E., Michael L. Trehy, Wei Ye, Terry Moore, James Allgire, and Benjamin Westenberger. “Identification of Amino-Tadalafil and Rimobant in Electronic Cigarette Products Using High Pressure Liquid Chromatography with Diode Array and Tandem Mass Spectrometric Detection.” *Journal of Chromatography* 1217, no. 48 (November 26, 2010): 7547–55. <https://doi.org/10.1016/j.chroma.2010.10.018>.

²⁵ Cullen, Karen A., Bridget Ambrose, Andrea S. Gentzke, et al. “Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018.” Centers for Disease Control and Protection, *Morbidity and Mortality Weekly Report (MMWR)* 67, no. 45 (November 16, 2018): 1276–77. <https://doi.org/10.15585/mmwr.mm6745a5>.

²⁶ Case, Kathleen R., Dale S. Mantey, MeLisa R. Creamer, et al. “E-Cigarette- Specific Symptoms of Nicotine Dependence among Texas Adolescents.” *Addictive Behaviors* 84 (September 2018): 57–61. <https://doi.org/10.1016/j.addbeh.2018.03.032>.

create more combustible cigarette and tobacco product users^{27,28};

Whereas more than 8 out of 10 teen e-cigarette users (ages 12-17) report using products flavored to taste like menthol, alcohol, candy, fruit, chocolate, or other sweets²⁹;

Whereas the most commonly cited reasons for using e-cigarettes among both youth and young adults are curiosity, flavoring/taste, and low perceived harm compared to other tobacco products, while use of e-cigarettes as an aid to quit conventional cigarettes is not reported as a primary reason for use among youth and young adults³⁰;

Whereas flavored, including menthol, tobacco product use is highest among those 12-17 years old and lowest among those older than 65 years old³¹;

Whereas in 2017-2018, current use of menthol- or mint-flavored e-cigarettes among high-school students increased from 42.3% to 51.2%, and from 21.4% to 38.1% among exclusive e-cigarette users³²;

Whereas research indicates youth who first tried a flavored tobacco product are more likely to become current tobacco users than those who first tried a non-flavored product³³;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013³⁴;

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes³⁵;

²⁷ Dunbar, Michael S., Jordan P. Davis, Anthony Rodriguez, et al. "Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-Cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood." *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, October 2, 2018. <https://doi.org/10.1093/ntr/nty179>.

²⁸ Bold, Krysten W., Grace Kong, Deepa R. Camenga, et al. "Trajectories of E-Cigarette and Conventional Cigarette Use Among Youth." *Pediatrics* 141, no. 1 (January 1, 2018): e20171832. <https://doi.org/10.1542/peds.2017-1832>.

²⁹ Centers for Disease Control and Prevention (CDC). "E-Cigarettes and Young People." Centers for Disease Control and Prevention, January 31, 2017. <https://www.cdc.gov/features/ecigarettes-young-people/index.html>.

³⁰ "E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General." Rockville, MD: U.S. Department of Health and Human Services, 2016. https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.

³¹ Villanti, Andrea C., Amanda L. Johnson, Bridget K. Ambrose, K. et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)." *American Journal of Preventive Medicine* 53, no. 2 (August 2017): 139-51. <https://doi.org/10.1016/j.amepre.2017.01.026>.

³² Cullen, et al. "Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011-2018."

³³ Villanti, et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)."

³⁴ "Youth Risk Behavior Surveillance — United States, 2013." Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR), Surveillance Summaries* 63, no. 4 (June 13, 2014). <https://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.

³⁵ King, Brian A., Michael A. Tynan, Shanta R. Dube, and Rene Arrazola. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health* 54, no. 1 (January 2014): 40-46. <https://doi.org/10.1016/j.jadohealth.2013.07.033>.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%³⁶;

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"³⁷.

Now, therefore it is the intention of the Somerville Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Somerville Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations."

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

³⁶ Ringel, Jeanne S., Jeffrey Wasserman, and Tatiana Andreyeva. "Effects of Public Policy on Adolescents' Cigar Use: Evidence From the National Youth Tobacco Survey." *American Journal of Public Health* 95, no. 6 (June 1, 2005): 995–98. <https://doi.org/10.2105/AJPH.2003.030411>.

³⁷ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, menthol, mint, wintergreen, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter, and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket, or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service, or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that relies on vaporization or aerosolization. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name. "E-Cigarette" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Educational Institution: Any public or private college, school, professional school, scientific, or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals that uses the services of one (1) or more employees.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

"Tobacco" flavor shall be considered a Characterizing Flavor for any product that relies on vaporization or aerosolization.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars, or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Somerville Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Somerville is twenty-one (21).

2. Required Signage

a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Somerville Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Somerville Board of Health that discloses current referral information about smoking cessation.

c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e- cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the City of Somerville without first obtaining a Tobacco Product Sales Permit issued annually by the Somerville Board of Health. Only owners of establishments with a permanent, non-mobile location in Somerville are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Somerville.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be

provided with the Somerville regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state, and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Somerville Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

8. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

9. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

10. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

11. A Retail Store may sell (1) tobacco-flavored tobacco products such as cigarettes, cigars, chew tobacco, spit tobacco and any product that contains parts of leaves and/or stems of a tobacco plant and (2) unflavored solutions that are designed to be vaporized or aerosolized.

12. A Retail Tobacco Store or Smoking Bar may sell all types of unflavored and flavored tobacco products as well as unflavored and flavored solutions designed to be vaporized or

aerosolized.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more
3. This Section shall not apply to:
 - a. The sale or distribution of any single cigar having a retail price of two dollar and fifty cents (\$2.50) or
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City of Somerville.
4. The Somerville Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

H. Sale of E-Cigarettes Restricted:

No person shall sell or distribute or cause to be sold or distributed any E-Cigarette, as defined herein, except in Smoking Bars and Retail Tobacco Stores.

I. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Somerville.

J. Free Distribution and Coupon Redemption:

No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or

redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy- two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

K. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

2. A retailer of Liquid Nicotine Containers, where liquid nicotine is an "acutely hazardous waste" as identified in 310 CMR 30.136, must comply with the provisions of 310 CMR 30.000, and must provide the Somerville Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

3. The sale or distribution of e-cigarettes, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

4. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et seq."

L. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

M. Vending Machines:

All vending machines containing tobacco products, as defined herein are prohibited.

N. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

O. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Somerville shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

P. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Somerville shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Q. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

a. In the case of a first violation, a fine of three hundred dollars (\$300.00).

b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

d. In the case of four violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with §P.4 and may permanently revoke a Tobacco Product Sales Permit.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for a minimum of thirty (30) consecutive business days.

4. The Somerville Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and

establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Somerville Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

R. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

S. Separate Violations:

Each day any violation exists shall be deemed to be a separate offense

T. Enforcement:

Enforcement of this regulation shall be by the Somerville Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Somerville Board of Health or its designated agent(s) and the Board shall investigate.

U. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

V. Effective Date:

This proposed regulation shall take effect on April 1, 2019.

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3. 